

## CHAPTER 213 CONDUCT VIOLATION INVESTIGATION

### Section 1 Background

#### 1. PTRS ACTIVITY CODES

A. *Maintenance*: 3730

B. *Avionics*: 5730

**3. OBJECTIVE.** This chapter provides guidance for conducting a violation investigation in accordance with Order 2150.3, Compliance and Enforcement Program, as amended.

#### 5. GENERAL

##### A. *Definitions*

(1) *Administrative action*: The action taken when compliance is not present but is attainable, providing the case meets the requirements listed in Order 2150.3.

(2) *Airworthiness*: (3) Since “airworthiness” is not defined in the FA Act of 1958, as amended, or in the regulations, a clear understanding of its meaning is essential in conducting a violation investigation. A review of case law relating to airworthiness reveals two conditions that must be met for an aircraft to be considered “airworthy.” These conditions are:

(a) The aircraft must conform to its type design (certificate). Conformity to type design is considered attained when the required and proper components are installed and they are consistent with the drawings, specifications, and other data that are part of the type certificate. Conformity would include applicable supplemental type certificates and field approved alterations.

(b) The aircraft must be in condition for safe operation. This refers to the condition of the aircraft with relation to wear and deterioration. Such conditions could be skin corrosion, window delamination/crazing, fluid leaks, tire wear, etc.

(2) *Legal action*: The action taken when a disregard for compliance is exhibited and/or the occurrence is serious enough to affect the safety of persons and/or property.

(3) *Legal proceedings*: Any proceeding before a court of law, administrative board, commission hearing officer, or other body conducting either a legal or administrative hearing.

B. Regional review of Enforcement Investigative Reports (EIRs) reveals discrepancies that show a lack of understanding of the Compliance and Enforcement Program procedures. These discrepancies result in the Regional Counsel being unable to take appropriate action due to the following:

- Lack of sufficient evidence
- Inadequate reporting of facts and analysis

C. FAA Order 8310.2, Maintenance Review Case Handbook, provides the Airworthiness Inspector with guidance for maintenance decisions that may be applied in resolving issues of a similar nature. Order 8310.2 is based on situations and the resulting decisions submitted by regional/district offices; it gives the circumstances and reasoning used in making the decisions. When a regional/district office has what is felt to be a unique situation with widespread implications, it can be submitted with the resulting decision for inclusion in Order 8310.2.

**7. COMPLIANCE AND ENFORCEMENT RESPONSIBILITIES.** All FAA employees are responsible for reporting any suspected violations to the appropriate investigating District Office and cooperating in a timely manner in the resulting investigation, as required.

##### A. *District Office Inspectors*

(1) All inspectors are responsible for the following:

(a) Having the knowledge, skill, and ability to counsel and educate the public and aviation industry in how to comply with the Federal Aviation Regulations

(b) Preventing violations of the regulations whenever possible. This generally falls into one of two categories:

- Ensuring that airmen, agencies, and operators are in full regulatory compliance before issuing any certificates or authorizations
- Ensuring that regulatory compliance is adhered to through use of a thorough and systematic surveillance program

(2) Inspectors can only require compliance with the minimum rule, precisely as it is written.

**B. Unit Supervisors and Reviewing Principal Inspectors.** Immediate supervisors are responsible for ensuring that their subordinates are trained and given proper guidance in the investigation and reporting of violations. Their responsibilities include the following:

(1) Tracking the investigation and reporting process to ensure timely progression

(2) Assisting inspectors during the investigation and reporting process by reviewing the report to ensure:

- Completeness and accuracy
- Preparation in accordance with Order 2150.3
- Inclusion of a reference to and a paraphrase of each regulation cited in the EIR, Section B. This is absolutely essential to ensure that a violation has actually occurred and that there are Items of Proof to support all cited elements of the rule.

**C. District Office Manager.** District office managers have the overall responsibility for ensuring the effectiveness and suitability of the Compliance and Enforcement program in their district. This includes the quality and

timeliness of each investigation and report. The District Office Manager's responsibilities include the following:

(1) During the final District Office review of the EIR, reviewing each regulation cited to ensure applicability and that Items of Proof are available to support it

(2) Coordinating with Regional Counsel when there are items that need clarification. A written record of this should be attached to the report.

**D. Flight Standards Division.** The Flight Standards Division is responsible for the review of all EIRs to determine their adequacy and completeness. Their options include the following:

(1) Accepting the report as submitted and forwarding it to Regional Counsel

(2) Not accepting the report and:

(a) Calling the District Office to request more information or additional Items of Proof

(b) Returning the report for further investigation or rewrite

(c) Recommending a downgrade to a "No Action" or "Administrative action" report and returning it to the District Office

(d) Revising the report, with proper coordination, to:

- Provide accuracy and completeness
- Add or delete regulations
- Change the recommended action or sanction

**E. Regional Counsel.** Regional Counsel reviews the report for sufficiency of the Items of Proof and appropriateness of sanction. If Counsel determines that the Items of Proof are insufficient or that any other deficiencies exist in the report, coordination with the Division will be required. The reporting inspector may also be contacted to discuss the report and provide clarification and/or additional Items of Proof.

## 9. DETERMINING THE REGULATION VIOLATED

A. The first step in analyzing the regulations is to determine what regulation was violated.

(1) The investigating inspector must determine what subchapter(s) and Part(s) of Title 14 of the Code of Federal Regulations are appropriate to the situation.

(2) The investigating inspector must be able to determine the general applicability of the subpart(s) of the regulations to prevent citing an inappropriate section.

### B. *Determining Enforceability*

(1) Sections and subsections of the regulations must be carefully analyzed to determine their enforceability. Some regulations are not enforceable because they either confer authority or responsibility, or are definitive or explanatory in nature. The rule must contain mandatory or prohibitory language to be enforceable.

(a) *Restrictive regulations:* Regulations that categorically state that something “must” be done or adhered to. These regulations can and must be enforced. Restrictive regulations must contain the following types of language:

- “Shall” and “must”, because they are mandatory
- “No person may” or “A person may not”, because they are prohibitory

(b) *Permissive regulations:* Regulations that do not state what must be done or adhered to. The inspector can encourage use of these regulations to airmen, air agencies, or operators, but cannot enforce them.

- When used alone, “may” is not enforceable because it is permissive, used to state authority or permission

(2) The four remaining types of regulations consist of the following:

- Conditionally prohibitive language, such as “no person may, except” or “unless” is enforceable only in instances that are not covered by the exceptions
- Conditionally mandatory language, such as “each person shall, except” or “unless” is enforceable only in instances that are not covered by the exceptions
- Regulatory language that simply confers authority or responsibility, such as “the aircraft owner is responsible” is used to determine assignment of responsibility
- Definitive or explanatory language, such as “this part prescribes” or “each of the following requires”, is used to determine regulatory applicability

C. *Elements of Regulations That Must be Proven.* All regulations have specific elements or component words that convey important information that must be proven in order to show noncompliance. In order to determine a violation, the investigating inspector must be able to answer the following questions; who, what, when, where, how, and why.

D. *Enforcement of Other Referenced Documents.* Occasionally, due to the scope and detail involved, documents other than regulations are incorporated by reference. The legal effect is to require compliance with those documents; however, the FAR is the regulation violated not the reference.

(1) Some regulations reference and require the use of manuals, service bulletins, specifications, Airworthiness Directives, etc. Although a person may be required to use these documents, it is the regulation which requires their use that is violated, not the referenced document.

(2) The referenced documents in this type of situation become the primary Items of Proof that must be referenced in EIR Sections B and D.

E. *Backup Regulations.* FAR § 91.77, ATC Light Signals, cannot be violated alone. Noncompliance with FAR § 91.77 must be cited as a backup for FAR § 91.75(b), “Compliance

with ATC Clearances and Instructions.” In other words, FAR § 91.75(b) is violated by reason of FAR § 91.77.

F. *Conditional Relief Regulations.* Some sections give conditional relief for other sections of the regulations. For example, FAR § 137.49, “Operations over Congested Areas,” for agricultural aircraft operations relieves FAR § 91.79(c), “Minimum Safe Altitude,” with conditions.

G. *Alternative Regulations.* FAR § 91.9 is an alternative type of regulation, the choices being either “careless” or “reckless.” These items are not synonymous and the report should be developed to stress the appropriate one or, if applicable, both of them.

(1) The National Transportation Safety Board (NTSB) has defined “careless” as “failure to exercise ordinary or proper care.”

(2) The NTSB has defined “reckless” as “wanton abandonment of concern for the consequences of an act.” Additionally, the NTSB has defined that a “reckless” operation results from the operation of an aircraft conducted with a deliberate or willful disregard of the regulations or accepted standards of safety, so as to potentially or actually endanger the life or property of another.

H. *Section 609 of the Federal Aviation Act.* Section 609 of the Act is actually impossible to violate, but, on the basis of Section 609, the FAA can reinspect or reexamine and, when necessary, amend, suspend, or revoke a certificate.

(1) If, upon request for a reinspection or reexamination, a person refuses to allow or fails the retesting, an enforcement investigation report must be prepared. Only Section A is required to be completed, to include the documentation of the need or justification for the reexamination.

(2) Written justification for reexamination or reinspection may be in the form of:

- An accident report
- An incident report

- A complaint
- An inspector’s personal knowledge of suspected or known incompetency

I. *Intent of the Regulation.* Preambles of Federal Aviation Regulation revisions may be of some help in determining the intent of the rule, but enforcement action can only be taken on what the rule actually says. It may be helpful to include a copy of the pertinent preamble in the Items of Proof and expound on the intent of the rule in the Facts and Analysis in Section D.

J. *Intent of the Alleged Violation.* It is very difficult, if not impossible, to prove intent. The FAA cannot normally file a violation on intent, only on the actual occurrence of a violation. The only exception to this is when the rule contains the word “intent.”

K. *Preponderance of Evidence.* There must be more evidence that a violation did occur than there is evidence that it did not occur. For example, one witness statement, even that of an inspector, does not outweigh an alleged violator’s statement that there was no violation. There must be other proving or circumstantial evidence to support the violation in order for Regional Counsel to process the report.

## 11. FAA FORM 2150-5, ENFORCEMENT INVESTIGATION REPORT

A. When preparing the report for review, the inspector should keep in mind that there is an average time limit of 60 days for submittal. This time limit is based on the date the violation was known by the office doing the investigation to the date the report is reviewed and signed by the office manager and forwarded to the region.

B. This time limit is especially critical when submitting reports that recommend certificate action sanctions. Reports closed out with “no action” are less critical and should be ranked by the investigating inspector accordingly.

**13. FAA FORM 2150-5 - SECTION A.** Section A is the only section of the EIR that must be used with every violation, regardless of the type of action or sanction, to include a closing of the case with “no action.”

A. The “Related Report Number” should be entered only when there is another violation by another person that was a part of the same occurrence. For example:

(1) A violation of FAR § 121.371, “Required Inspection Personnel” applies to both the certificate holder and the person performing the inspection. Therefore, both would be in violation of the same rule at the same time.

(2) When an occurrence involves more than one person, or a certificate holder and employee, prepare a master report and one or more companion reports. Items of Proof common to all related reports need to be included only in the original copy of the master report. The Items of Proof index of the companion report need only:

- List the items unique to that report, e.g., enforcement history, airman history, etc.
- Include a statement that the other documents are in the original copy of the master report

(3) All related violations shall be forwarded to the Region at the same time, under the same cover, so that they can be reviewed and evaluated simultaneously.

B. Figure 213-1 is a sample copy of the FAA Form 2150-5, with abbreviated instructions in the appropriate blocks.

**15. FAA FORM 2150-5 - SECTION B - SUMMARY OF FACTS.** A good Summary of Facts is vital in assembling a quality investigation and report.

A. *Problems with Section B.* The main problem associated with Section B is the length and content of the statements. Some things to consider when writing this section include the following:

- The investigating inspector does not have to report every supporting fact in Section B. Simply state what the alleged violator did or did not do in violation of the regulations.

- Section B does have to cover all elements of the violation. Do not try to mix violations covering more than one rule or section in just one statement.
- When paraphrasing the regulation, simply paraphrase the appropriate section telling what the person did or did not do to be in violation of the rule

#### B. *Constructing the Summary of Facts*

(1) Make a concise statement of established facts that are essential to proving the violation of each regulation believed violated.

(2) The wording of the summary should tie directly to the wording of the regulation.

- Show what was done or not done that resulted in a violation
- Edit and paraphrase the appropriate section or subsection of the regulations

(3) Ensure that the regulation that relates to the Summary of Facts is not a definitive or explanatory regulation.

(4) Be prepared to substantiate the alleged violation with Items of Proof.

**17. FAA FORM 2150-5 - SECTION C - ITEMS OF PROOF.** When investigating the alleged violation, gather any data or information that may be pertinent to the case. Do not worry about “Rules of Evidence” at this point in time.

A. To coordinate the writing of the Facts and Analysis and to help readers during the review process, the following guidance should be followed:

(1) List the Items of Proof in chronological order. Start with the record of telephone notification, surveillance report, incident report, complaint, or whatever brought the occurrence to the attention of the Flight Standards District Office (FSDO).

(2) Add each primary Item of Proof to the listing as the investigation progresses. Technical supporting Items of Proof should then be grouped with the primary Items of Proof to which they relate. The dates on technical supporting Items of Proof mean nothing as far as chronological listing goes, but they may be important to show the currency at the time of the violation.

B. *The Law of Evidence.* The Law of Evidence establishes whether Items of Proof are admissible or acceptable. In general, evidence is only admissible if it is:

- Relevant - logically related to an issue in the case
- Material - significantly related to an issue in the case
- Competent - of a generally reliable type

C. *Hearsay Evidence.* Hearsay evidence is not generally considered to be competent evidence and is not admissible to prove a fact. However, much of the evidence used in FAA civil cases is hearsay and is admissible as exceptions to the hearsay rule. Therefore, all attainable evidence should be gathered. This evidence can be sorted out later, if necessary, by the Regional Counsel.

D. *Proving and Circumstantial Evidence.* Only salient (proving) evidence should be referenced in the Summary of Facts. The FAA realizes that all evidence is submitted to support that a violation did occur, but it also is submitted for background and circumstances surrounding the event (both mitigating and aggravating). By referencing only salient evidence relied upon to establish an act contrary to a regulation, the need for communications between the FSDO, Regional Office, and Regional Counsel may be lessened.

E. *Sufficient Versus Insufficient Evidence.* When evidence is insufficient for a legal enforcement action, it is insufficient for any enforcement action. Administrative actions are not a procedure for reporting a violation based on insufficient evidence. If there is insufficient evidence, the case must be closed out with “no action.”

F. *Effectiveness of Documentary Evidence.* Make copies of pertinent information as soon as possible to prevent documentation from being altered, corrected, or “conveniently lost” after being returned to the alleged violator.

G. *Legible and Certified Copies.* All copies of Items of Proof must be legible, and official documents or microfilm must be certified. The person making a certified true copy must sign it. Published documents need not be certified but must be legible.

H. *Listing All Items of Proof.* All copies of Items of Proof, except physical evidence, must accompany the report. Each item of proof shall be numbered and tabbed consecutively. Each item of proof, including a brief statement of its content and what the item proves, shall be listed in an index to this section of the report. Keep the index in a logical sequence to aid in reviewing the report. Do not mark or deface original Items of Proof. If marks must be made, use plastic overlays or mark on a copy.

(1) *Notice of Investigation and Response.* In all cases, include the letter of investigation or state in the Analysis of Section D that an oral notice was given. Always include the violator’s response which gives the violator an opportunity to explain, excuse, or deny the alleged violation. Document the initial notification and either the following response or lack of response.

**NOTE: Oral notification may be used only when it is apparent that no legal enforcement action will be recommended.**

(2) *Enforcement Information Subsystems (EIS) Information.* Always document the violation history of the alleged violator in the EIS. The official violation history may be obtained only through the AIDS/EIS Display and Profile.

(3) *Background Evidence.* Be sure to include any photographs, sketches, drawings, portions of the manufacturer’s manual, etc., that will materially contribute to a clear technical explanation of legal evidence.

(4) *Witness Statements.* Interview and obtain written statements from all knowledgeable witnesses, or at least a

representative number if more than one person witnessed the violation.

(a) Select the best witnesses based on their apparent knowledge.

(b) If an inspector witnesses a violation or becomes knowledgeable of anything pertinent that is not contained in other witness statements (such as verbal statements made by witnesses, engine teardown, etc.), the inspector should prepare and sign a personal statement.

(c) Statements should be complete and concise. They should convey what the person said, did, or perceived. Include the witness's complete name, address, telephone number, occupation, and aeronautical experience. Any opinions should be shown as such.

(d) If a witness refuses to sign a statement after it is written, the inspector should ask if they agree to the substance of the statement. If the witness agrees but still refuses to sign, the inspector should make a notation to that effect, date and sign the statement with signatures of any witnesses to the discussion.

(5) *Photographic Evidence.* When photographs are used as essential evidence, it is extremely important to include the following:

- Name(s) and address(s) of photographer(s)
- The date and time the pictures were taken
- The type of camera and focal length of camera lens
- The type of film used
- The name of the person with custody of the negatives

(6) *Charts, Maps, and Diagrams.* These can be very helpful, when pertinent, to show airports, terrain, congestion, obstructions, etc. They may also be useful

in interviewing witnesses, evaluating their statements, and establishing the degree of hazard involved. Be sure to explain the intended purpose of these items in Section D of the report. Always include a copy of the Terminal Control Area chart that was current at the time of a Terminal Control Area violation.

(7) *Air Traffic Control (ATC) Records.* It can help if FSDOs establish a written agreement with ATC facilities regarding notification procedures and procuring of ATC records and tapes as evidence.

(a) The FSDO must request, within 15 days following the occurrence, that all pertinent records and tapes be held if there is an indication of a violation. ATC must be advised, within five days after the request, whether or not they need to send the records and tapes to the FSDO.

(b) When requesting tapes, ask for only the portion pertinent to the violation. ATC can cut and preserve that portion of the original tape for transcript if needed. A transcript is not needed unless requested by Regional Counsel.

(8) *National Weather Service Records.* If weather is a factor in the violation, obtain certified copies of pertinent weather data from the National Weather Service to be included in Section D of the report.

#### (9) *Aircraft Flight Recorder Information*

(a) The FAA is authorized to obtain and use aircraft flight recorder information in any investigation, including enforcement actions (FAR § 13.7). However, this information cannot be used to initiate an investigation when there is no other supporting evidence.

(b) Aircraft flight recorder information will not be used as evidence, but can be used to corroborate other evidence or to resolve conflicting evidence. Therefore, coordination with the Regional Office is required before use. If used, a certified readout of the information is required.

(c) If the NTSB has the information, request the information in accordance with Order 2150.3. During the

readout of the information an FAA representative must be present to testify for authenticity.

(10) *Cockpit Voice Recorders.* The use of cockpit voice recorder records as evidence in enforcement is prohibited for use in civil penalties or certificate action.

(11) *Other Government Records.* If other Federal or local law enforcement agencies are involved, obtain pertinent records from them. If court proceedings have occurred, obtain the pertinent transcripts and certified copies of any court orders (convictions, etc.). Include copies of any foreign, state, or local laws as applicable.

(12) Medical Records

(a) Medical records usually cannot be obtained without the consent of the individuals or by subpoena. One exception to this is when alcohol or drugs are involved. Under these circumstances the pilot must consent to provide the pertinent records in accordance with FAR § 91.11 (c) and (d).

(b) Airman medical information printouts may be obtained from Comprehensive Airmen Information Subsystem (CAIS), or an airman medical form from AAC-130.

(c) If the medical records cannot be located through the Comprehensive Airmen Information Subsystem or AAC-130, request a "diligent search" certificate from AAC-130 and include it in the Items of Proof.

(13) *Physical Evidence.* Ensure that physical evidence is not lost, destroyed, damaged, or altered. Establish a chain of custody if necessary, or lock it up in a secure place. Be sure to take photographs of all physical evidence and include them in the Items of Proof, along with an explanation of where the evidence is located.

(14) *Submission of Additional Evidence/Material.*

Any additional Items of Proof discovered during the submittal of the report by the district office should be immediately sent to the Regional Office. This should include the inspector's evaluation and recommendations concerning the material.

**19. FAA FORM 2150-5 - SECTION D - FACTS AND ANALYSIS.** In this section of the report the inspector provides the background to support the Summary of Facts. This narrative will include all supporting facts, circumstances, and conditions surrounding the alleged violation and the resulting investigation. The Facts and Analysis will be relied upon by the FSDO and Regional Counsel for determining precisely what the appropriate final action and sanction should be. It is therefore essential that the Facts and Analysis be as accurate and as complete as the inspector can make it. The breakdown of Section D is as follows:

A. *Facts.* The narrative for this section is a complete, detailed, factual account of the investigation of the violation.

B. *Analysis.* This section gives the inspector the chance to express personal opinions and conjecture based on technical knowledge, skill, and expertise. It also provides the opportunity to evaluate and technically analyze the facts as presented in the Items of Proof and factual narrative. For standardization the sequence below should be followed:

(1) *Reliability of Evidence.*

(a) The inspector should have interviewed witnesses, if available, during the investigation to determine the aeronautical knowledge and experience so their reliability as witnesses could be evaluated.

(b) Some evidence is going to vary in strength. In this section, the inspector must explain the strengths and merits of all pertinent Items of Proof.

(2) *Conflicting Evidence.* Carefully review the entire factual narrative to determine if there is any conflicting evidence.

(a) This is the opportunity for the reporting inspector to discuss and reference evidence that is contradictory to the known facts. An example is an alleged violator denying being in violation after receiving a letter of investigation. This is obviously contradictory to the facts that are supporting the investigation and needs to be referenced.

(b) Review the Items of Proof to determine if there is any conflict regarding the make, model, or registration number of the aircraft involved. Conflicts in names, dates,



and times may also occur. Reference and explain any conflict.

(c) If there is no conflict in evidence, then simply state that fact.

(3) *Safety Involvement and Impact.* The safety aspects of a violation are of utmost importance. Analyze how safety was or was not affected and the possible impact on life or property.

(a) The technical factors upon which the inspector bases any conclusions should be included, discussed, and referenced as an Item of Proof.

(b) Analyze any endangerment and determine whether it should be classified as actual, inherent, or potential. Actual or inherent endangerment is much more critical than potential endangerment and should be analyzed accordingly.

(c) Analyze the “careless” or “reckless” aspects and elaborate on the willfulness, intention, and deliberateness of the violation, if applicable.

(d) Consider and analyze the safety impact in regards to the certificate holder’s responsibility.

(e) If airworthiness is involved, analyze and evaluate each airworthiness discrepancy with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities set by the type design or other approved data.

#### (4) *Mitigating and Aggravating Circumstances.*

Determine if there are any mitigating or aggravating circumstances involved in the violation or in the investigation and analyze and report them. If there are no mitigating or aggravating circumstances, state it as such.

#### (5) *Opinions, Feelings, and Conjecture*

(a) The reporting inspector can include any narrative in the report that the inspector feels will contribute to the allegation. This includes opinions and conjectures, as long as they are labeled as such.

(b) When giving an opinion or conjecture, be specific, even when the opinion cannot be completely supported by facts. This includes giving opinions on the following subjects:

- Alleged violator’s skill or judgement
- Proficiency or adequacy of training
- Lack of qualifications and/or competency
- Lack of the proper supervision
- Adequacy of the violator’s recordkeeping system

#### (6) *History of the Alleged Violator*

(a) When possible, personally discuss the violation with the alleged violator, in person, prior to writing the report. This will allow the inspector to visually perceive attitude and gather other personal knowledge of the violator that will be helpful in determining the sanction to be imposed.

(b) The past record, attitude towards safety and compliance, the economic status of the person or organization involved, and the cooperation exhibited during the investigation should be included and taken into consideration.

(c) Consider and analyze previous violation history and how it may or may not be relevant to this report. If there is no violation history, then state it as such.

(d) In every situation in which corrective action has been taken or is in progress, a description of the action should be included along with the inspector’s opinion as to its effectiveness.

#### (7) *Summarize a Conclusion and Recommendation.*

In the conclusion and recommendation, the inspector should carefully review and analyze all information that has been included in the report. Keep in mind that this is to be the rationale for the enforcement action and sanction that will be recommended.

(a) In all situations, consider whether the sanction is to:

- Remedy
- Punish
- Make an example to discourage future noncompliance

(b) There are special factors that must be considered before recommending a sanction. For example:

- For a certificate action, how the loss of the certificate might affect the certificate holder's livelihood
- For a civil penalty, the person's economic situation

(c) After considering all other factors, the final criteria for imposing a civil penalty should be based on the following factors:

- The violator holds no certificate
- No question of qualification is involved
- The case is too serious to handle administratively
- The suspension is unfair or will create undue hardship
- Suspension is not required for aviation safety

(d) When determining what the civil penalty should be, consider the following:

- The appropriate amount of penalty should be based on the facts and circumstances of the case and current agency policy
- Multiple violations for a single act or omission may be considered one violation if a case does not involve flagrant violations or a The violator holds no certificate

- When multiple regulations are cited as a result of separate violations, a civil penalty for each separate violation may be recommended

(e) After considering all other factors, the final determination for a certificate action should be based on the following factors:

- Suspension or revocation action may be taken for punitive or remedial action
- Suspension may be recommended pending completion of remedial action (retraining, reexamination, etc.)
- Revocation of a certificate or rating is appropriate when specifically authorized by the Federal Aviation Regulations or evidence establishes lack of qualifications

(f) When determining what the certificate action should be, consider the following:

- Does safety require it?
- Do technical proficiency or qualifications warrant it?
- Did the certificate holder resist reexamination?
- Was the reexamination not satisfactorily accomplished?
- Is withdrawal of privileges warranted for punitive action?
- If action was taken by an employer or other agency, should suspension action still be recommended, if warranted? Such action may be considered in determining the extent of suspension or amount of civil penalty.

(g) If certificate action is recommended to run concurrently with a company action, include the exact dates of the company suspension.

**NOTE: Remember that the “Stale Complaint Rule” for certificate suspension is 6 months from the date of occurrence. Remember that even a serious case can diminish in importance over a period of time.**

(h) Revocation of a certificate is initiated when:

- The lack of capability is not immediately correctable
- There is repeated unwillingness or inability to comply
- There is continued use of certificate, detrimental to the public interest
- The person’s conduct demonstrates lack of qualification

(i) Emergency certificate actions may be taken only when clearly needed in the public interest. The following urgent considerations apply to all recommended emergency actions:

- The Manager, Flight Standards Division must be notified by telephone immediately when emergency action is contemplated
- With Regional concurrence, action must be taken as soon as the need is recognized
- Emergency action is not to be used for punitive reasons
- The inspector must show evidence that the certificate holder lacks qualifications or will continue with noncompliance

- An EIR must be completed and processed as soon possible

(j) Other actions are available to the investigating inspector, as warranted. If these other actions are to be imposed, notify the Manager, Flight Standards Division of all facts and circumstances and complete an EIR as soon a possible. This includes any type of complex or emergency type of action mentioned in Order 2150.3. Other actions available can include the following:

- Seizure of aircraft: If removal of the aircraft is suspected to prevent payment of a civil penalty or if further flight is contemplated in noncompliance with the regulations
- Cease and Desist Orders: If a violator continues to violate the regulations after other actions have been taken
- Order of Compliance and Injunctions: To prevent a violation, when there are reasons to believe that one is about to occur

(k) Criminal prosecution is resorted to in cases of criminal actions and should be turned over to the proper authority for investigation. These criminal actions can include the following:

- Aircraft piracy
- Interference with flight crewmembers or flight attendants
- Certain crimes aboard aircraft in flight
- Carrying weapons or hazardous materials aboard an aircraft

(l) Drug related sanctions should be handled in accordance with FAR Parts 61, 65, and 91. After notifications of final conviction in a drug related case, the EIR must be processed.

## Section 2 Procedures

### 1. PREREQUISITES AND COORDINATION REQUIREMENTS

#### A. Prerequisites

- Knowledge of the regulatory requirements of the Federal Aviation Regulations
- Successful completion of Airworthiness Inspector's Indoctrination Course for General Aviation and Air Carrier Inspections, or previous equivalent

B. *Coordination.* This task may require coordination with:

- Other specialties
- The assigned principal inspectors
- If a geographic unit, with the Certificate Holding District Office (CHDO)

### 3. REFERENCES, FORMS, AND JOB AIDS

#### A. References

- Order 2150.3, Compliance and Enforcement Program, as amended
- Order 8020.11, Aircraft Accident and Incident Notification, Investigation, and Reporting, as amended
- Order 8300.10, Airworthiness Inspector's Handbook, Vol. 2, Ch. 210, Introduction to Conducting Accident and Incident Investigations, Processing a Violation Package, and Responding to a Complaint

#### B. Forms

- FAA Form 2150-5, Enforcement Investigative Report

#### C. Job Aids. None.

### 5. PROCEDURES

#### A. Initiate the Investigation of the Alleged Violation

(1) Receive notification of the violation.

(2) Write a letter of investigation. Ensure that the letter includes a statement of what the alleged violation consisted of and the assigned EIR number.

**NOTE: The regulation(s) violated should not be listed in the letter of investigation**

B. *Gather the Supporting Facts.* Gather all related information. This can be accomplished by:

- Reviewing records
- Taking photographs of items associated with the alleged violation
- Acquiring witness statements
- Reviewing technical documents, e.g., manufacturers maintenance manuals, aircraft flight manuals, etc.
- Interviewing the alleged violator
- Acquiring technical information from other agencies, e.g., National Weather Bureau and ATC
- Inspecting physical evidence

#### C. Analyze the Supporting Evidence

(1) Review the data collected to ensure that it is relevant, material, and competent.

(2) Review the regulations in conjunction with the Items of Proof. Ensure that the following questions are answered for each relevant regulation:

- To whom does it apply?
- What does it say in its entirety?
- Where must it be complied with?
- When must it be accomplished?
- How does it apply in this occurrence?
- Are there special conditions?
- Are there exceptions or exclusions?
- Does this regulation clearly apply?
- Are any other regulations applicable to this violation?

(3) After this analysis and review, decide if the evidence warrants continuing with the violation investigation. If the evidence is insufficient or inadequate to proceed, close the case with “no action.” A “no action” case still requires Sections A and B of the EIR to be completed.

#### D. Initiate the EIR

(1) *Section B, Summary Of Facts.* Make a brief and concise statement of established facts that are essential to proving the alleged regulatory violation.

(a) Ensure that the Summary Of Facts:

- Is specific, simple, and positive
- Contains only one statement for each specific violated subsection of the regulations
- Has the number of the primary Item of Proof of the violation following each statement

- Shows what was done or not done that violated the specified regulation
- Briefly identifies who, what, when, where, why, and how, as they relate to the violated regulation
- States only what is proven in the report

(b) If there is insufficient evidence to prove the violation, close the case with “no action.”

(2) *Section C, Items Of Proof.* Arrange all Items of Proof in chronological order, including records of telephone conversations, incident reports, complaints, or whatever brought the occurrence to the attention of the FAA. Include technical supporting Items of Proof together with the primary Items of Proof to which they relate.

(a) Ensure that the following items are included, as applicable:

- The initiating document
- Copy of the Letter of Investigation or phone call
- EIS violation history of alleged violator
- EIS information on the airman or operator
- EIS information on the aircraft
- Copy of the operating certificate held by the alleged violator
- Copy of the pertinent part of the operations specifications or waiver, if provisions are believed violated
- Copy of the pertinent part of Airworthiness Directive, airman’s logbook, service bulletins, maintenance manual, etc., when maintenance or operational airworthiness is involved

- City maps and/or aerial photographs when low altitude flying is involved
- A separate signed statement by inspectors when their area of expertise or experience with the alleged violation is involved
- Expert witness statements if a judgment item is involved, if available
- A copy of the appropriate en route or sectional chart, or approach chart, when controlled airspace is involved
- A copy of the accident or incident report
- All pertinent weather information when weather is involved, including area forecasts with all SIGMET/AIRMET amendments and terminal forecasts, all amendments for departure point, destination, and along the route of flight including the two hours prior to the flight beginning and the two hours after it ended
- All of the documents mentioned in Sections B and D of FAA Form 2150-5
- Airman records Diligent Search certificate, if applicable
- Witness statements from all air traffic controllers involved, as applicable
- Photographs of the physical evidence

(b) Include a numerical index of all Items of Proof with a brief statement of contents.

(c) Ensure the following:

- The names, addresses, and telephone numbers of all witnesses are listed in the report

- All Items of Proof are numbered as such
- All documents are originals, when possible
- Copies of official documents are certified
- Photographs and original documents are not marked or defaced

(3) *Section D, Facts And Analysis.* Ensure that all supporting facts, circumstances, and conditions surrounding the alleged violation and the resulting investigation are included.

(a) *Facts:* Ensure the following:

- All documents in Section C, Items of Proof, are referenced
- All documents referenced in the Facts are included as Items of Proof
- All pertinent facts and circumstances are described in an organized, chronological order, starting with Item of Proof #1 and including all pertinent facts from all Items of Proof
- The complete factual case history of what the investigation provided is stated in an orderly and logical narrative of each pertinent fact
- All related investigative actions are included, such as leads followed, what was found during the investigation, and the factual conditions and circumstances surrounding the violation and investigation
- That if these items are not documented in witness statements, technical publications, airmen logbooks, manuals, etc., a personally signed statement by the inspector documenting them is included in the Items of Proof

(b) *Analysis:* For standardization, this sequence should be followed in writing the analysis:

- Reliability of Evidence
- Conflicting Evidence

**NOTE: At this point, if there is no clear preponderance of evidence, evaluate the evidence carefully to determine if the case should be closed out with “no action.”**

- Safety Involvement and Impact
- Mitigating and Aggravating Circumstances
- Opinions, Feelings, and Conjecture
- History of Alleged Violator
- A summarized Conclusion and Recommendation

E. *Submit Report For Review.* Submit the report within 60 days. Before submission of the report, inspect the package to ensure the following:

- A numerical index of all Items of Proof, with a brief statement of contents is included
- Each item of proof is numbered as an Item of Proof

- All items are listed in a logical order
- All originals of documents are included, if possible
- Copies are certified when appropriate
- All photographs of physical evidence are included
- All Items of Proof referenced in the report are included and are referenced in the Facts and Analysis

## 7. TASK OUTCOMES

### A. *File PTRS Transmittal Form*

B. Completion of this task will result in one of the following actions:

- Closing out the report with a “no action”
- Submitting the EIR package for review

C. *Document Task.* File all supporting paperwork in accordance with Order 2150.3

**9. FUTURE ACTIVITIES.** Follow up on requests from Region, Regional Counsel, etc.

